



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL CASE NO. 35 OF 2010

REPUBLIC PROSECUTOR

-VERSUS-

HENRY ONYANGO AGUNDA ACCUSED

21.4.2011

Before: Hon. Lady Justice M. Odero
Court Clerk Mutisya
Mr. Onserio for State
Mr. Gichana for Accused

MR. GICHANA: The accused is now present in court. My client told me that he saw his wife whom he is alleged to have murdered. She came to court on 16th March 2011 on a day the court was not sitting. I ask the State to confirm whether the victim of this crime is still alive which means the accused has been illegally held in custody since November 2010.

M. ODERO
JUDGE

MR. ONSERIO: The accused was the author of his own misfortune. We did correctly charge the accused. The accused's mother-in-law reported a domestic dispute where accused assaulted his wife with an iron bar and threatened to kill. Accused called his mother-in-law in Nyanza and reported that he would kill his wife and child. Later on 3rd November 2010 accused called his mother-in-law and told her that the alleged victim was now dead. Despite a search by police the wife and child could not be traced. We charged accused on the basis of circumstances. After accused was charged his wife recorded a statement that after the fight she left with her child to Likoni and did not communicate with any family member. At this juncture no offence of murder has occurred. The police were however justified in charging accused with the information they had. I wish to enter a Nolle Prosequere terminating both counts of murder. I do present the Nolle.

MR. GICHANA: No objection.

COURT

Nolle Prosequere is hereby received and accepted by court. The accused is to be released forthwith

unless he is otherwise lawfully held.

M. ODERO
JUDGE
21.4.2011